



4764 NE 22nd St. | PO Box 1864 | Des Moines, IA 50313 | Phone: 515.323.5888 | Fax: 515.264.7976

September 12, 2008

Mr. Chad Stobbe
Land Quality Bureau
Iowa Department of Natural Resources
502 East 9th Street
Wallace State Office Building
Des Moines, IA 50319-0034

Re: Iowa Administrative Code (IAC) 567 Chapter 108 proposed changes

Dear Mr. Stobbe:

Artistic Waste Services, Inc. and its sister company Phoenix C & D Recycling, Inc. (hereafter AWS) submits the following comments on the proposed amendments to IAC 567, Chapter 108 titled "*Beneficial Use Determinations: Solid By-Products As Resources And Alternative Cover Material.*"

1. 567-108.3 Definitions: AWS opposes the elimination of fill material as an option for elevation improvements. AWS believes using fill material to make elevation improvements should remain an option for the Department. Using fill material for this purpose can be done in a manner consistent with the Department's environmental goals. No scientific evidence has been provided by the Department relating to the detrimental effect of using fill material in this manner. Indeed, the material produced by our process and typically used as alternative daily cover is tested to show that it contains no hazardous waste. Normal construction and demolition materials contain 13.7% gypsum in this metropolitan area. The product we market after elaborate manual and mechanical screening typically has less than 1% gypsum. It is largely dirt, small pieces of rubble and wood chips. It can easily be mixed in large quantities with clay or other soils to produce a completely environmental safe fill.

2. 567-108.4 Universally approved beneficial use determinations: It has been proposed to remove Alternative Cover Material from this section completely.

Currently, there are many products being used as alternative daily cover at landfills in Iowa. However, as a construction and demolition recycler, our product is directly derived from a waste stream that has always been introduced to the landfill.

Our ability to systematically remove recyclable materials in order to reduce the portion of the C&D waste stream entering the landfill produces a by-product that would otherwise be deposited in the landfill in a non-beneficial manner.

Our process refines the material in order to make a consistent, value added material that has been proved to work in the State of Iowa. During conversations with Mr. Chad Stobbe of the DNR, he mentioned numerous other forms of alternative cover materials that have been used by landfills in an abusive manner in order to receive the coveted IDNR reduction goal. However, many of these materials are not derived from a recycling process such as ours. Most of them are derived from a process that is not connected to the waste stream at all.

As stated earlier, commonly used alternative cover material is produced as a direct result of a waste diversion process that adds value to the majority of tons that enters our facility. **It would be an understatement to say the removal of an universally approved beneficial use determination for alternative cover derived from C&D recovery processes would be detrimental to the recycling industry. This provision has the potential to cause great harm to the state's recycling program and violates the legislative intent of Chapter 455B. We also note that we are aware of no other state regulatory bodies that have adopted such a regulatory approach.**

108.5(2)(5)(c) A demonstration that there is a known market: While this proposed rule change is understood by us as a producer, it must also be stated that in an industry as regulated as ours, it is nearly impossible to devise a feasible marketing strategy for a new product without producing the product prior to receiving a beneficial use determination. In the solid waste processing business, we must always receive permission from the Department prior to the production of any new product. That said, it would be beneficial for a "test period" of a significant timeframe and volume in order to properly market new materials.

108.6 Requirements for beneficial uses other than alternative cover material: This proposed rule states that any beneficial use determinations for materials used as fill must be regulated by sanitary landfill rules.

The adoption of this proposed change will greatly hinder the sustainability of not only our industry, but many others as well. The DNR should continue to regulate this area as it currently does.

There have always been testing criteria that a company must abide by in order to receive a beneficial use determination. The theory that these fill projects must be held to the same standard as a solid waste landfill, where no processing or testing takes place, is simply overstepping regulatory authority.

The entire basis of this rule is to ensure that no environmental safety or human health is affected. As mentioned above, testing criteria ensure that neither the environment nor human health is compromised by these projects. By applying the strict landfill liner guidelines to these projects, the DNR is precluding the ability for new market development as well as successful projects that



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have had a proven and beneficial basis. There is absolutely no reason that fill projects where materials have no detrimental impact to environment or health need be classified and regulated with landfills that accept the entire spectrum of the waste stream, from diapers to asbestos.

108.10 proposed 8 Beneficial use of alternative cover material and state goal progress: The proposal that there be no cost to the generator or hauler in order to receive credit for reduction by a solid waste agency will likely hinder the ability for recyclers to remain viable.

It is important to understand that in the C&D recycling industry, alternative cover material is a necessary product to produce. That said, while many landfills utilize this material nationwide, it is not always economically justifiable nor politically acceptable to not purchase this material. Hopefully, landfills will accept the material for free or for a small charge. For the DNR to state there can be no cost to a generator or hauler in order to exempt solid waste agencies from the DNR fee is the same as de-marketing the cover material as a recycled product all together. This would hamper the ability of recyclers within the State of Iowa as most solid waste comprehensive planning areas have only one landfill as a market. Therefore, the marketing of alternative cover to landfills outside of the facility's comprehensive plan becomes significantly more difficult because of the increasingly high transportation costs and the artificial monopoly created by comprehensive plans.

In addition, this proposal change will incentivize landfills to utilize soil (which in Iowa has a great value) instead of alternative cover. Utilizing recycled C&D waste as an alternative daily cover encourages recycling in one of the largest waste streams in Iowa. We believe it is important to make a distinction in this proposed rule between our alternative cover and others for that reason. We request there be separate regulatory rule to characterize the physical content of our product as well as fee exemption rules for our material as our process greatly reduces the amount of waste entering landfills.

Sincerely,

Anthony Colosimo
By TDD

Anthony Colosimo
CEO

Artistic Waste Services, Inc. and
Phoenix C & D Recycling, Inc.